

CIVIL SERVICE COMMISSION MINUTES

October 4, 2000

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Sigrid Pate
Mary Gwen Brummitt
Barry I. Newman

Comprising a quorum of the Commission

Absent were:

Roy Dixon
Gordon Austin

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES
October 4, 2000

1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
5			6,7

COMMENTS Motion by Brummitt to approve all items not held for discussion; seconded by Newman. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this
location to hear the announcement of the
Closed Session Agenda

A. Commissioner Brummitt: Richard Pinckard, Esq., on behalf of **Robert Merrill**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department.

B. Commissioner Dixon: Wendell Prude and Daniel Morales, S.E.I.U. Local 2028, on behalf of **Xose Escamilla**, former Construction and Services Worker I, appealing an Order of Removal and Charges from the Health and Human Services Agency.

C. Commissioner Pate: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Federico Gallardo**, Pharmacy Technician, appealing an Order of Suspension and Charges from the Health and Human Services Agency.

D. Commissioner Pate: Todd Tappe, Esq., on behalf of **George Dean**, Correctional Deputy Probation Officer II, appealing an Order of Suspension and Charges from the Department of Probation.

REGULAR AGENDA
County Administration Center, Room 358

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and it is approved by the President of the Commission.

MINUTES

1. Approval of the Minutes of the regular meeting of October 4, 2000.

CONFIRMATION OF ASSIGNMENTS AND REASSIGNMENTS

2. Commissioner Brummitt: **Robert Mutch**, former Audio Visual Specialist, appealing an Order of Termination and Charges from the Health and Human Services Agency.

Confirmed.

3. Commissioner Austin: Daniel Morales, S.E.I.U. Local 2028, on behalf of **Thomas Vierling**, former Detention Processing Supervisor, now a Booking Clerk, appealing an Order of Demotion and Transfer by the Sheriff's Department

Confirmed.

4. Commissioner Newman: Frank S. Clowney III, Esq., on behalf of **Thomas Eret**, former Building Maintenance Supervisor, appealing an Order of Removal and Charges from the Department of General Services.

Confirmed.

5. Sanford Toyon, Esq., on behalf of **Paul LaCroix**, Deputy Sheriff, appealing an alleged punitive reassignment that resulted in a loss of compensation by the Sheriff's Department.

RECOMMENDATION: Assign a Commissioner to conduct a pre-hearing to determine if the reassignment of Deputy LaCroix was a form of discipline.

Mr. Toyon, Esq. on behalf of Appellant, had no objection to a pre-hearing on this matter. However, he felt that this issue should be very clear to the Commission as it mirrors the Eddie Head case and therefore the result should be the same and a hearing should be granted.

Julie Strauss, Esq. representing the Department, stated that this matter is different from the Head case in that Appellant was not served with an order of discipline and therefore he is not entitled to an appeal. She further explained that this was not a punitive transfer, and if it were, Appellant would have been entitled to an internal administrative appeal. Ms. Strauss stated that Deputy LaCroix was not disciplined, he was transferred because he did not meet the standards of the position.

Motion by Brummitt to accept staff recommendation; seconded by Newman. Carried. Commissioner Dixon assigned.

WITHDRAWALS/LOSS OF JURISDICTION

6. Commissioner Brummitt: Richard Pinckard, Esq., on behalf of **Marco Carreon**, Deputy Sheriff, appealing an Order of Suspension, Reassignment, and Charges from the Sheriff's Department.

Withdrawn.

7. Commissioner Brummitt: Bradley Fields, Esq., on behalf of **Steven Ruff**, Sheriff's Sergeant, appealing an Order of Pay Step Reduction and Charges that has been amended to a Letter of Reprimand by the Sheriff's Department. The Commission does not have jurisdiction regarding reprimands.

Withdrawn.

DISCIPLINES

8. Commissioner Brummitt: Richard Pinckard, Esq., on behalf of **Robert Merrill**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Inefficiency (failure to prepare a crime/incident report on a reported crime); Cause II - Dishonesty (untruthful statements); Cause III - Inefficiency (inaccurate log entry); Cause IV - Dishonesty; Cause V - Failure to Meet Standards; and Cause VI - Inefficiency - (failure to document physical force).

Employee was a law enforcement officer for 30 years, employed as a Deputy Sheriff for 16 years. In September of 1998, Employee responded as a cover deputy to a dispatch concerning a female behaving erratically. The female seemed to have extraordinary strength and the deputies on duty had extreme difficulty in subduing her. She had attempted to grab their guns, bite them and with a crazed look in her eyes, repeatedly yelled that she would kill them. Neither deputy at that incident filed a use-of-force report.

On March 16, 1999 Employee received verbal counseling and a counseling slip regarding his failure to take appropriate and necessary action on a crime reported to him by administrators at Fallbrook High School. Employee failed to take the juvenile (in possession of alcohol, tobacco and narcotics residue) into custody or cite same, and failed to properly complete and submit the required reports.

On March 23, 1999 Employee was dispatched to take a report on a possible stalking of a woman by her former husband. Employee went into the woman's house, seemed distracted and told her he did not have the forms to prepare a report and that if she desired a report, he would have to come back later. Employee asked the woman to tell dispatch that she was not home when he arrived, that she did not have time to speak with him and that she did not want him to prepare a report. She testified that she refused Employee's suggestion.

On March 29, 1999 Employee took a phone call from a woman who was reporting that she had been a victim of a date rape. Employee told her that if she wanted him to make a report, he would have to advise the suspect that he was being accused of the date rape. He assured her that he had taken notes on her call so that a report could be completed when she obtained more information. A detective from the Department testified that the normal protocol is for a deputy receiving a call regarding sexual assault to obtain initial statements

and to complete a face sheet to provide to a detective. It is not normal protocol for a deputy to approach a suspect and inform him that he has been accused. It was determined that there was insufficient evidence to prosecute due to review of the case several weeks after the incident was reported. If an investigation into the matter had been timely, physical evidence might have been obtained that might have led to a conviction of the suspect. The Department's training bulletin regarding sexual assault investigations states that a deputy should not make a decision as to the validity of an alleged crime and that the sexual assault investigator should be notified and that the responding deputy should take immediate steps to protect the crime scene.

On May 5, 1999 Employee was interviewed by OIA regarding the above incidents. On June 25, 1999, he saw a counselor through the Employee Assistance Program. Employee testified that after the September 1999 incident with the agitated female, he experienced anxiety and depression. Extensive testimony and written evidence was presented at the Commission hearing regarding Employee's psychological condition and resulting degree of accountability. The hearing officer took all testimony into consideration, separating any input about Employee's psychological condition that may relate to external issues such as Workers' Compensation. The County's evaluators concluded that Employee is suffering from a psychological condition, affecting his psychological and intellectual capability, negatively affecting his work performance. Compounding the seriousness of the charges against Employee is the fact that he had been repeatedly counseled regarding similar conduct. The hearing officer found that Employee displayed calculated malfeasance, whatever his mental condition.

The Department failed to prove the charges under Cause IV. The Department proved all charges under Causes I, II, III, and V. These causes demonstrated a pattern of dishonesty and contrivance. The Department has consistently demonstrated that integrity in its deputies is the highest valued attribute and that dishonesty in any degree will not be tolerated. It is therefore ordered that the Order of Termination be affirmed; that the proposed decision shall become effective upon the date of approval by the Civil Service Commission; and that the Commission approve and file this report.

**Motion by Brummitt to approve Findings and Recommendations;
seconded by Newman. Carried.**

9. Commissioner Dixon: Wendell Prude and Daniel Morales, S.E.I.U. Local 2028, on behalf of **Xose Escamilla**, former Construction and Services Worker I, appealing an Order of Removal and Charges from the Health and Human Services Agency.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Willful misconduct causing waste of public supplies (taking non-documented County surplus for approximately 5 years); Cause II - Insubordination; Cause III - Dishonesty; Cause IV - Failure of good behavior; Cause V - Conduct

unbecoming an employee of the County; and Cause VI - Acts incompatible with or inimical to the public service.

Employee was employed as a Construction and Services Worker I in the HHSA for approximately 9 years. At the hearing, OIA testified that during an interview in April 2000, Employee admitted to periodically donating furniture, which he obtained from County sites in the course of his employment, to the church where he is a member and his father is the pastor. The OIA investigator interviewed Employee's father at his church and took photos of furniture and equipment identified by Employee's father as having been provided by Employee. Employee admitted delivering property that he obtained from County facilities to his father's church, however, he denied any intentional wrongdoing and subsequently returned the items to the County. Employee expressed remorse and cited the following as mitigation: he wanted to help the church; all the items were going to property disposal (salvage); and he returned the items of his own volition. Employee was willing to accept discipline but requested that he be allowed to keep his position.

Employee testified that he believed the items were not County property because they were not labeled as such and allegedly were not identified in Form 253 (identifying equipment and its disposition). Nevertheless, Employee received the items from County offices in the course of his County employment, and delivered some of the items to the church on County time. Photographs introduced at the hearing indicated that the furniture and equipment at issue were valuable and in good condition. It would be unreasonable for Employee to believe that they would not be similarly useful to the County. He argued that there was no clear policy and/or procedure for him to follow. However, he did acknowledge receipt of the Agency's Conduct Standards and the Agency's Ethical and Legal Standards. These documents clearly put Employee on notice regarding the County's sensitivity concerning the use of County property as well as the exercise of caution in allowing one's personal interests to conflict with one's duties on behalf of the County.

Although Employee was cooperative in the return of the property and in the investigation, such mitigation was insufficient to reduce the Agency's elected discipline. Employee's breach of trust was of such a magnitude that the Agency could not continue to employ him.

The hearing also revealed an apparent laxity in controls and procedures concerning disposition of used County property. It is hoped that these matters will be further reviewed by the appropriate County Agency/Department.

The Agency proved all charges in Causes I through VI (except the valuation of the County equipment at issue). It is therefore ordered that the Order of Removal and Charges be affirmed; that a copy of the Report be forwarded to the Interim Director of HHSA and the Director of General Services with an invitation to take special notice regarding the procedures concerning disposition of used County property; that the proposed decision shall become effective upon the

date of approval by the Civil Service Commission; and that the Commission approve and file this report.

**Motion by Newman to approve Findings and Recommendations;
seconded by Brummitt. Carried.**

10. Commissioner Pate: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Federico Gallardo**, Pharmacy Technician, appealing an Order of Suspension and Charges from the Health and Human Services Agency.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Negligence (failure to correctly enter prescription information into a Pharmacy computer); Cause II - Incompetence (failure to follow protocol when delivering medications to patients); Cause III - Conduct unbecoming an officer or employee of the County). Employee was employed as a Pharmacy Technician in the Agency for approximately five years with a history of standard to above-standard performance.

The subject discipline relates to an incident occurring in August 1999. A County mental health patient was found dead and in his possession were medications prescribed to another County mental health patient. Although the death was determined to be the result of other causes, the Agency was concerned and an investigation was conducted. The evidence proved that in August, both the deceased patient and the prescribed patient appeared for appointments and a nurse at the clinic inadvertently delivered the prescription without checking identification, resulting in the mix-up. On August 13, 1999 the Chief Pharmacist distributed a memo regarding procedure for properly identifying a patient, as well as requiring the technician at the pharmacy filling station to initial the prescription label. In its investigation, the Agency found that procedural errors were made by the nurse, the pharmacy technician, the pharmacist, and the pharmacy technician assigned to the front window (Employee). The Order of Suspension charged Employee with the typographical error regarding the quantity of medication on one of the prescription labels, and the second cause in the Order charged Employee with failing to follow procedure regarding verifying patient identification. The hearing officer stated that although the typographical error involved a degree of negligence, it was within the foreseeable range of human error. Additionally, the Pharmacist on duty who was responsible for ensuring the accuracy of the prescription labels was given a one-day suspension. The hearing officer concluded that the two-day suspension was too severe based in part on the following considerations: lack of consistency and/or clarity regarding the proper procedure for processing prescriptions, Employee's record of standard to above-standard performance, and the lesser level of discipline imposed on the pharmacist on duty for arguably, a more serious error. Employee was found guilty of Causes I, II and III. It is therefore recommended that the Order of Suspension be modified to a letter of reprimand; that Employee be awarded back pay, benefits, and interest for any suspension time already served related to the suspension and order, minus any wages he received from outside employment; that a copy of

this report be given to the interim director of HHSA for his attention to procedural problems addressed herein and for any action he deems necessary; the proposed decision shall become effective upon the date of approval by the Civil Service Commission; and that the Commission approve and file this report.

Motion by Pate to approve Findings and Recommendations; seconded by Newman. Carried.

11. Commissioner Pate: Todd Tappe, Esq., on behalf of **George Dean**, Correctional Deputy Probation Officer II, appealing an Order of Suspension and Charges from the Department of Probation.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause 1 - Conduct unbecoming an officer of the Probation Department and the County of San Diego; Cause 2 - Failure of good behavior; Cause 3 - Acts incompatible with and inimical to the public service; and Cause 4 - Dishonesty.

Both the Department and the Appellant made opening statements and presented preliminary matters. After giving her initial impression of the evidence and after advising both parties of the potential risks as well as benefits in proceeding with the appeal, the hearing officer suggested that the parties discuss resolution during a short recess. After the recess, the Appellant advised the hearing officer of his desire to withdraw his appeal. The hearing officer accepted the withdrawal.

Motion by Pate to approve Findings and Recommendations; seconded by Newman. Carried. Withdrawn.

OTHER MATTERS

Seal Performance Appraisal

12. Todd Tappe, Esq., on behalf of **George Dean**, Correctional Deputy Probation Officer II, Department of Probation, requesting the sealing of Mr. Dean's performance appraisal for the period July 27, 1999 to July 27, 2000.

RECOMMENDATION: Deny Request.

Staff recommendation approved.

Extension of Temporary Appointments

13. Department of the Alternate Public Defender

1 Public Defender Investigator Trainee (Gerald Maya)

14. Assessor Recorder/County Clerk

2 Division Chief II's (Gary Fairbanks, Robert Luitjens)

15. Health and Human Services Agency

A. 1 Facilities Analyst (Robin Fritchman)

B. 1 Social Services Administrator II (Josie Frelke)

RECOMMENDATION: Ratify Item Nos. 13 - 15.

Item Nos. 13-15 ratified.

16. Public Input.

ADJOURNMENT: 3:15 p.m.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE NOVEMBER 1, 2000.